

Donald L Denney

NAME

F72321 - 4B-2A-108

PRISON NUMBER

California Correctional InstitutionP.O. box 1906

CURRENT ADDRESS OR PLACE OF CONFINEMENT

Tehachapi, CA 93581

CITY, STATE, ZIP CODE

2254	1983
FILING FEE PAID	
Yes	No
HTP MOTION FILED	
Yes	No
COPIES SENT TO	
Court	ProSe

FILED	
DEC 10 2007	
CLERK, U.S. DISTRICT COURT	
SOUTHERN DISTRICT OF CALIFORNIA	
BY	DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Donald Lawrence Denney

(FULL NAME OF PETITIONER)

PETITIONER

v.

Warden Gonzales

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

The Attorney General of the State of California, Additional Respondent.

Civil No.

'07 CV 2317 LAB WMC

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

## PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254  
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: \_\_\_\_\_

2. Date of judgment of conviction: 4/20/073. Trial court case number of the judgment of conviction being challenged: CASE - # 5ce2703284. Length of sentence: 16 months

5. Sentence start date and projected release date: Start - 4/10/07  
Release Date - 7/30/08

6. Offense(s) for which you were convicted or pleaded guilty (all counts) (Vehicle Theft)

7. What was your plea? (CHECK ONE)

- (a) Not guilty ☐  
 (b) Guilty ☒  
 (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

- (a) Jury ☐  
 (b) Judge only ☐

9. Did you testify at the trial?

- ☐ Yes ☒ No

#### DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?

- ☐ Yes ☒ No

11. If you appealed in the California Court of Appeal, answer the following:

- (a) Result: \_\_\_\_\_  
 (b) Date of result, case number and citation, if known: \_\_\_\_\_

(c) Grounds raised on direct appeal: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:

- (a) Result: \_\_\_\_\_  
 (b) Date of result, case number and citation, if known: \_\_\_\_\_

(c) Grounds raised: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: \_\_\_\_\_
- (b) Date of result, case number and citation, if known: \_\_\_\_\_
- (c) Grounds raised: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

#### COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☐ Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:

(a) California Superior Court Case Number: CASE # SCE270328

(b) Nature of proceeding: modification of Stipulated Sentence.

(c) Grounds raised: I have had medical Issues, Seizures and it takes weeks sometimes months on waiting lists to see doctors /specialists. The over crowding Is real trouble some.

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

- (a) California Court of Appeal Case Number: \_\_\_\_\_
- (b) Nature of proceeding: \_\_\_\_\_  
\_\_\_\_\_
- (c) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (d) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☐ No
- (e) Result: \_\_\_\_\_
- (f) Date of result: \_\_\_\_\_

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?

☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information:

- (a) California Supreme Court Case Number: \_\_\_\_\_
- (b) Nature of proceeding: \_\_\_\_\_  
\_\_\_\_\_
- (c) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (d) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☐ No
- (e) Result: \_\_\_\_\_
- (f) Date of result: \_\_\_\_\_

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court containing the grounds raised in this federal Petition, explain briefly why you did not:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

### COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (If "YES" SKIP TO #22)

- (a) If no, in what federal court was the prior action filed? \_\_\_\_\_

(i) What was the prior case number? \_\_\_\_\_

(ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: \_\_\_\_\_

- (b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

- (c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

### CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

# GROUND ONE

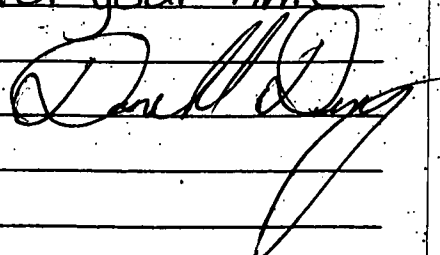
22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds, and/or facts supporting each ground.

(a) **GROUND ONE:** Over crowding is causing my medical Needs to be pushed back. It takes weeks sometimes months to get in for appointments, or to get results back.

Supporting FACTS (state *briefly* without citing cases or law) I've put in several request to the Prisons medical Department coordinator for copies of my medical Records, so I could make them available to the court, to show the Negligence of timely medical care. Once again I've fallen Into the cracks.

All I am asking is to be released to a work furlow program, which will allow me to Address my own medical needs, also Program would help me also to become responsible. Right ~~now~~ now its come down to me having to have a Sezure, or something drastic, to happen health wise in order to get the prison to act in a ~~professional~~ professional matter. I am asking respectfully to be brought before your Honor to Address these Issues.

Thank You for your Time



Did you raise GROUND ONE in the California Supreme Court?

☐ Yes ☒ No.

(b) **GROUND TWO:** \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

Did you raise GROUND TWO in the California Supreme Court?

☐ Yes ☒ No.

(c) **GROUND THREE:**

Supporting FACTS (state *briefly* without citing cases or law):

Did you raise GROUND THREE in the California Supreme Court?

☐ Yes ☒ No.

(d) **GROUND FOUR:** \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

Did you raise GROUND FOUR in the California Supreme Court?

☐ Yes ☒ No.

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☐ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: \_\_\_\_\_

(b) Case Number: \_\_\_\_\_

(c) Date action filed: \_\_\_\_\_

(d) Nature of proceeding: \_\_\_\_\_

(e) Grounds raised: \_\_\_\_\_

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Kimberly Vegas (Public Defenders office) She represented me in El Cañon Superior court

(b) At arraignment and plea: Kimberly Vegas

(c) At trial: \_\_\_\_\_

(d) At sentencing: Kimberly Vegas

(e) On appeal: \_\_\_\_\_

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding: \_\_\_\_\_

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☐ Yes ☒ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the future sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☒ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: 12/6/07

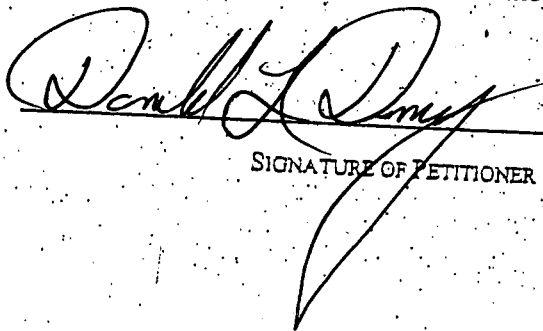
Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12/6/07

(DATE)

  
SIGNATURE OF PETITIONER

JS44

(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September, 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I (a) PLAINTIFFS

Donald Lawrence Denney

Gonzales, Warden

**FILED**  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *RM* DEPUTY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Kern  
(EXCEPT IN U.S. PLAINTIFF CASES)

2254 1983  
FILING FEE PAID  
Yes No  
HFP MOTION FILED  
Yes No  
COPIES SENT TO  
Court PreSe

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Donald Lawrence Denney  
PO Box 1906  
Tehachapi, CA 93581  
F-72321

ATTORNEYS (IF KNOWN)

'07 CV 2317 LAB WMC

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PT                         | DEF                        |   | PT                         | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury - Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b>	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act 29 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSL (405(e))	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input checked="" type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> Security Act		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 12/10/2007

SIGNATURE OF ATTORNEY OF RECORD

*R. Melch*